

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as presented in the prior decision are incorporated herein by reference.

On February 14, 2013 appellant, then a 49-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging a work-related injury on December 9, 2012. She explained that she had worked the night of December 8, 2012 on a new machine and experienced severe pain in her neck and both arms. When appellant awoke on December 9, 2012 she could not raise her arms.

In the prior appeal, the Board affirmed a May 6, 2014 OWCP merit decision, which found that appellant had not met her burden of proof to establish a diagnosed medical condition causally related to the accepted December 9, 2012 incident. The Board reviewed medical reports from appellant's treating physicians Dr. Chad M. Cannon, Board-certified in emergency medicine; Dr. Tiffany Williams, a Board-certified physiatrist; Dr. Jay L. Carter, a chiropractor; Dr. Aimee Widner, a Board-certified physiatrist; and Dr. Reginald L. Fears, a physiatrist. The Board explained that the reports from appellant's physicians failed to provide sufficient medical rationale, based on a complete factual background, explaining how appellant's diagnosed conditions had been caused or aggravated by her particular employment duties on the date in question. The Board noted that a need for medical rationale was especially important given appellant's delay in reporting the injury and her complicated preexisting cervical condition.

Following the Board's January 12, 2015 decision, appellant requested reconsideration in an undated letter, which OWCP received on December 21, 2015. She advised that her injury resulted from work on the delivery bar code sorter machine, all-purpose containers, and racks which required constant repetitive reaching, lifting, pulling, and pushing equipment. Appellant also stated that she had worked on machines numerous times performing the work of two individuals. She indicated that there was evidence from the Occupational Safety and Health Administration in the record which indicated that the machines she worked on caused shoulder injury. Appellant also noted that her left shoulder had previously been injured in 2010 and 2011.

By decision dated January 29, 2016, OWCP denied reconsideration without reviewing the merits of the case.

³ Docket No. 14-1493 (issued January 12, 2015).

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁵

To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.⁶ However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following reconsideration, any merit decision by the Board, and any merit decision following action by the Board.⁷

If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS

On December 21, 2015 OWCP received appellant's request for reconsideration. To be entitled to a merit review of OWCP's decision denying or terminating a benefit, her application for review must be received within one year of the date of that decision.⁹ The Board has held, however, that OWCP's procedures¹⁰ should be interpreted to mean that a right to reconsideration within one year accompanies any subsequent merit decision on the issues, including any merit decision by the Board.¹¹ As the Board's January 12, 2015 decision was the last merit decision of record and the request for reconsideration was received within one-calendar year of that decision, appellant's request was timely filed.¹² The question for determination is whether her request met at least one of the three standards for obtaining a merit review of her case.

⁴ Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(3).

⁶ *Id.* at § 10.607(a).

⁷ *D.G.*, 59 ECAB 455 (2008); *see also C.J.*, Docket No. 12-1570 (issued January 16, 2013).

⁸ 20 C.F.R. § 10.608(b)(3); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ *Id.* at § 10.607(a).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(a) (October 2011).

¹¹ *See Mary E. Schipske*, 43 ECAB 318 (1991); *see also John W. O Connor*, 42 ECAB 797 (1991).

¹² *See J.S.*, Docket No. 15-1436 (issued December 4, 2015).

The Board finds that appellant has failed to show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent new evidence not previously considered by OWCP.

The underlying issue is primarily medical in nature, whether appellant established causal relationship between the diagnosed medical conditions and the accepted December 9, 2012 incident. Appellant's request for reconsideration neither alleged, nor demonstrated that OWCP had erroneously applied or interpreted a specific point of law.

Appellant's request for reconsideration also did not advance a relevant legal argument not previously considered by OWCP. Her own lay opinion does not constitute medical evidence.¹³ In this regard, appellant's statement is irrelevant to the underlying medical issue of causal relationship and is insufficient to reopen her case for a merit review.¹⁴ Her discussion of the duties she performed was previously considered, insofar as it relates to the events of December 9, 2012. Consequently, appellant was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

Appellant also did not submit any relevant and pertinent new medical evidence not previously considered by OWCP. The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3).

On appeal, appellant's counsel argues that OWCP's decision is contrary to fact and law. However, as previously noted, appellant's reconsideration request did not meet any of the requirements for reopening her case and OWCP properly denied a merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for merit review under 5 U.S.C. § 8128(a).

¹³ See *R.M.*, Docket No. 14-1749 (issued December 23, 2014).

¹⁴ See *Ronald A. Eldridge*, 53 ECAB 218 (2001).

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 21, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board